

May 1, 2018  
Seneca Falls Town Board Meeting

Discussion of relevant Resolutions starting at @19:43

**Supervisor Lazzaro:** OK, and the other change on the agenda is I am going to bring up Mr. Mark McNamara who's been working on the issue of the Ludovico Trail and, David, that's Resolution "V" and "W," correct?

**Town Attorney Foster:** Correct.

**Supervisor Lazzaro:** OK, Mr. McNamara, you have the floor, and if you'd like to make a motion, someone, if you'd like to read the motion, someone will make then make the motion and Second it and then we'll go from there, okay?

**Special Counsel Mark McNamara, Esq:** Alright, I will, you have a printed text of both motions, we'll do these one at a time, let me just give you a brief description of the first action and if anybody has any questions then I can address those questions and then the Board can act and move on to the second motion. Both motions deal with the Sanitary Sewer System Improvements Project which was also the subject of an Eminent Domain Procedure Law, Article 2 Public Hearing in March and that Project is -

**Supervisor Lazzaro:** Hold on, hold on, I don't have a copy of that and I know Lou said he doesn't have a copy.

**Town Clerk Greer:** No, none of you do [inaudible]

**Special Counsel Mark McNamara, Esq.:** Alright, let me describe it in detail, I can get you an extra copy as well. The first motion is to amend the Negative Declaration which is pursuant to the State Environmental Review Act which is also known as "SEQR" and that Resolution and that Negative Declaration was made by this Board on

February 2, 2016 that Resolution found that there we no negative impacts, no material environmentally damaging impacts that would result from the Sanitary Sewer Systems Improvement Project. But at that time, and that was based on a variety of studies that had been done before that, as well as the Full Environmental Assessment form which the Town had prepared working with an engineering consultant, Barton and Loguidice and that however, also anticipated a Phase I cultural resource investigation report being done by Archaeological Consulting Experts, LLC. That report which was a Phase 1A and a Phase 1B was not completed until after the resolution was passed on February 2, 2016.

There is nothing improper with respect to that under the law because it was anticipating this and even though the Board took that action the the further investigations that were done were consistent with the understanding and the Findings which were made in February 2016. However, in an abundance of caution the having completed that study and also having received not one but two letters from the State Historical Preservation Office which is also known as "SHPO," that there were no impacts as far as they were concerned with respect to the Project and specifically the Ludovico trail, actually, they looked at both alignments that were being considered; the Bayard/River Street as well as the Ludovico Trail. With those two letters having come out, one of which came out in March of 2016 and the second one came out last month, in April of 2018 from SHPO, this no impact letter. The Board is being presented an opportunity to reconsider and to amend that Negative Declaration with a new Negative Declaration which discusses the fact that these other events have happened, specifically the cultural studies, the 1A 1B cultural studies report was completed as well as receiving the two letters from SHPO. The second letter from SHPO came about as a result of an inquiry to SHPO from a member of the public. And a follow up by Barton and Loguidice with SHPO to make sure that there hadn't been any change with respect to their opinion and on that basis they issued this second no impact letter. So, all this is, is really a re-affirmation and it's an amendment but it's consistent with a re-affirmation of the original Negative

Declaration that this Board made back in 2016 with respect to the Sanitary Improvements System Project. Does anyone have any questions?

[24:26]

**Town Board Member Avery:** So this is cleaning up some of the details the allegations that the Ludovico Sculpture Trail's Owner's attorney made at the Public Hearing?

**Special Counsel Mark McNamara, Esq. :** It is responsive to that. There is, from a legal, our position as your counsel is that the Original Negative Declaration, and I can say I'm very confident about this, despite the timing objections which were made at the Public Hearing, but that original Negative Declaration was in fact valid and remains valid but, this is in light of the timing of that cultural study, which again was anticipated by the Original Negative Declaration and the subsequent letter from the SHPO the no impact letters that I mentioned from SHPO, it's that we're dotting the I's and crossing the T's, with respect to this. What I say, the reason it wasn't an issue, it's not a legal problem, with respect to the original 2016 Negative Declaration is it anticipated this cultural study. Had the cultural study come back and found that there was a problem, that there was some type of impact because of things that were found along the Ludovico Trail by way of example when they did their study then the Board would've received that information and would have had to then reconsider they may then have had to reconsider the Negative Declaration. But the findings of the cultural study were completely consistent with the Findings of the Board in February of 2016, that there were no impacts. And so that, the Board should consider and act on that first Resolution which is the Resolution to amend the Negative Declaration.

**Male audience member:** May I ask a question?

**Supervisor Lazzaro:** No sir, questions were asked at the Public Hearing.

**Male in Audience:** I am just asking about the agenda. This is not on the Agenda.

**Town Clerk Greer:** Yes, it is on the bottom.

**Supervisor Lazzaro:** No sir, it was on the agenda. In the beginning of this meeting, I moved some things up on the agenda, one of them was "V" & "W" Resolution, if the audience was attentive, then they would've heard me say that.

**Female audience member:** You did not say that, you did not.

**[audience commotion]**

**Supervisor Lazzaro:** So the motion is: Seneca Fall Town Board Resolution amending the Town of Seneca Falls Town Board's Determination of Significance to reaffirm the Town of Seneca Falls Town Board's Determination as lead agency that action to construct the Sanitary Sewer System Improvements Project will have no significant adverse environmental impact. Motion's made, I need a Second,

**Board Member:** Seconded.

**Supervisor Lazzaro:** Discussion? Seeing no discussion, we'll go to a vote. This has to be a roll call vote.

**Town Clerk Greer:** Roll call.

**Town Clerk Greer:** Greg Lazzaro?

**Supervisor Lazzaro:** Yes.

**Town Clerk Greer:** Vic Porretta?

**Board Member Porretta:** Yes

**Town Clerk Greer:** Doug Avery?

**Board Member Avery:** Yes.

**Town Clerk Greer:** DeLelys?

**Board Member DeLelys:** Yes.

**Town Clerk Greer:** Lou Ferrara?

**Board Member Ferrara:** Yes.

**Supervisor Lazzaro:** Motion passes.

[28:10]

**Special Counsel Mark McNamara, Esq.:** Alright, the second motion is pursuant to the Eminent Domain Procedure Law Section 204. And that is after having conducted the Public Hearing that you did and receive that public comments that you did both orally and as you recall the hearing was left open for an additional week to receive written comments, there were a number of written submissions that were made. That record then was put on file with the County Clerk's office as well as Miss Greer's office that could be Town Clerk's office and the next step is for the Board having considered all of that information to make its Determination and Findings with respect to this Project pursuant to EDPL 204.

The Project is, that the Town is considering the acquisition of certain real property permanent easement interests which are approximately 20' in width approximately 10' on either side of the actual installed force main pipeline in connection with the Project and in order to re-route and upsize the aging Kingdom Road pump station and force main located within the town. The Project route alignment alternatives of which there were two, were as follows: Running from Kingdom Road along the north side of New River Road to the Frank J. Ludovico Sculpture Trail on the south side of the Seneca and Cayuga canal to the Ovid street Bridge, that's Option A.

And the second option, Option B was running along the north side of New River Road and Bayard Street between Kingdom Road and the Ovid Street Bridge. You've conducted the Public Hearing as we've discussed and you have made your State Environmental Quality Review findings which is the Resolution you made two minutes ago, passed two minutes ago with respect to the Negative Declaration. So, under EDPL 204 the Town Board, before going forward with any acquisition of private property for a public Project has to make its Determination and Findings. The

Determination or proposed Determination and Findings that this Board is considering, are as follows: There is a description of the Project, which I have already given and the selection of Option A, which is the alignment route that runs along the Frank J. Ludovico Trail, so the findings that you are making in the first instance is with respect to the public use, benefit or purpose of the Project. I will go through these quickly because these were also presented at the Public Hearing. First of all, the Route is, more specifically the Option A; running from Kingdom Road, along the North side of New River Road for approximately 3,586 linear feet through parcels that are identified as under SBL numbers 34-1-30, 34-1-19.1 and 34-1-19.2 to the Frank J. Ludovico Sculpture Trail on the south side of the Seneca and Cayuga Canal which is SBL 19-1-01 to One Canal Street which is 11-3-29 that's its parcel identification number and finally to West Bayard Street, to the Ovid Street Bridge. The property at 2 West Bayard Street is 11-3-24.11. The Town Board has is proposing, in terms of its proposed Findings is to the public use, benefit or purpose of this Project is as follows: to upgrade the aging Kingdom Road Pump Station Sewer System infrastructure which has experienced multiple and serious and significant failures, removal of the centralized and aging waste water treatment plants from service in the Town of Junius and the NYSTA Junius Ponds. The town wastewater will be treated at a larger, more reliable and, excuse me, qualitatively improved facility. The Project will relieve the current aging infrastructure and sewer system pinch points which will result in increased flow and efficiency, support existing and future commercial developments and serve outside users at an increased sewer tax rate; provide capacity for additional users and future growth, the system's added efficiency will result in lower unit cost for the West Seneca Falls District users and increase tax revenue as development inside and outside the District continues. It will also obviate the need for future disturbance of the Sewer System on the North side of the Seneca Cayuga Canal and in turn preserve important environmental resources. And finally create positive economic activity in the form of temporary construction jobs associated with construction installation and installation of the Project. Those are the public uses benefits and purposes which the Town is proposing to find.

The second Finding is with respect to the location that was chosen and as I have just described, Option A was chosen, the Ludovico Trail Option. The reasons that this, you are finding that the reasons that that was chosen was because it will result in substantially less disruption to the Seneca Falls community, with respect to the nature and extent of the construction activities associated with the installation of the force main infrastructure, the force main Sewer line can be installed through horizontal directional drilling throughout most of this Route, Option A. The Option A Route impacts significantly fewer property owners and requires substantially fewer easements, being acquired, and it results in significantly fewer tree removals than Option B which again is along River Road and Bayard Street. And finally, it's materially less expense than any other alternative and will require less time to complete construction of the Project.

The alternative route which I've already described is Option B was also considered and it was rejected for the flip side of all of the reasons that I just gave. That is that there is a higher risk of damage to and a probable removal of numerous trees, mature trees, along that route, open trenching would be required, for most areas along the Route, significantly more property owners would be affected by the construction of the Project and the imposition of easements, the longer time needed to complete the Project construction with much greater construction costs and substantially greater disruption to the community, including traffic. That those are the findings with respect to the selection of the location and the reasons for that.

Finally, you're finding, you're making a finding with respect to the general effect of the Project, the proposed Project, on the environment and the residents of the locality. That finding is your Negative Declaration, your EDPL Determination and Findings simply incorporate by reference the Finding that you, the Resolution that you just passed, with respect to amending your original Negative Declaration and that would be your environmental findings for purposes of EDPL 204. And attached to the Resolution is a copy of the Determination and Findings as Exhibit 1, Exhibit A to the Determination and Findings are the two Negative Declaration letters because of the

Environmental findings, and finally, there is another Exhibit, Exhibit 2 to the Resolution which is the synopsis of the Determination and Findings which must be published in the newspaper in two consecutive editions and it will be published in the *Finger Lakes Times* and the *Reveille* in two consecutive issues, assuming the Board approves this Resolution.

**Supervisor Lazzaro:** The First Resolution, the Second Resolution; we can discuss that and I'll read the Resolution, okay. Pursuant to EDPL 204 Eminent Domain Procedure Law of the State of New York, the Town of Seneca Falls through which Town Board following the Public Hearing, held at the Seneca Falls Community Center, on March 22, 2018 and left open until April 5, 2018 for written submissions regarding the proposed acquisition of certain interests in real property located in the town for the Seneca Falls Sanitary Sewer System Improvements Project. I have a motion on the floor, do I have a Second?

**Board Member Deleys:** Second.

**Supervisor Lazzaro:** Discussion?

[37:08]

**Board Member Deleys:** I went on line with Diana Smith Economic Development and we looked up the Ludovico Trail. The 1.75 mile Frank J. Ludovico Sculpture Trail begins at Sucker Brook And continues 1.7 miles to the Bridge Street Intersection in the Village of Seneca Falls, The Ludovico Trail was developed by volunteers, and is managed by a non-profit membership organization, Frank J. Ludovico Sculpture Trail Incorporated. The trail is home to numerous sculptures inspired by women's' rights movements and created primarily for the women's' sculptures. The trail has been cleared and graded but does not have an improved trail surface. It is anticipated that the stone dust will be installed when the Canal Trail is constructed and trail head with a small parking area and trail information located West adjacent Bridge St. This will be similar to the Waterloo trail that goes from Waterloo to Geneva. Which is that canal trail supposedly comes up, Diane and I were reading that it goes over East



Bayard Street, across the locks, over to the Old Sylvania then it was supposed to shoot down the North side of the lake. So in this thing on-line on the Ludovico Trail it does say that it's part of the Canal trail and it eventually has to be upgraded to the standards.

**Special Counsel Mark McNamara, Esq.:** Can I? As you raise a very important point and shame on me for not addressing that as part of my remarks. This resolution does not commit the Town to upgrading the trail to the canal standards. And if you remember Peter Baker's detailed presentation at the hearing, and the materials that were presented, there was great detail with respect to how that would be done. The additional cost that would be tied into that and the Town's willingness to do that. In the face of the formal and informal objections from the Ludovico Trail Trust the, this is being presented, your Determination and Findings, your description of the Project does not include that. It doesn't mean that the Town can't do that, my understanding was the Town Board would only do that with the the acquiescence of the trail and if the trail opposed that, then the trail would be left in exactly the same natural condition as it was described at the Public Hearing.

**Town Attorney David Foster, Esq.:** This applies in the same fashion to at one point there were suggestions of having emergency phones, you know 911/blue light phones and the impression that I got is that is not something that the people that own the trail want. So we are trying to do, to the extent possible, their wishes so, if they want that, I would say, now is the time to speak up if that's what they want. Not now, not at this moment but they should make that preference known. I don't think it makes any difference to the Project one way or another as to how it is done, how it's finished as long as we know in advance what our marching orders are.

**Special Counsel Mark McNamara, Esq.:** Now, I know you are using "marching orders" in a colloquial way, but the Town is responsible for both the acquisition of the necessary property interests to build this Project and it is responsible for the construction of the Project and this this Findings, the Town is specifically leaving

open how that construction is done with respect to those refinements and that's what I'll call them refinements, but the consideration in terms of your environmental review and with respect to your Findings here is that you are acquiring permanent easements, the necessary permanent easements in order to install this Project. And the Project is the installation of the force main, it's not about what other amenities, if any, are added afterwards.

[42:02]

**Board Member Avery:** Mark, forgive my inexperience, but I'm trying to weed through what everything you've said. So, is this the Eminent Domain vote?

**Special Counsel Mark McNamara Esq.:** Yes, thank you for reminding me of that. This, in addition to making the Determination and Findings, the Resolution states: The staff ...the Resolution says, here are the findings, here is the synopsis of the findings, which are attached to Exhibit two and we are directing that those be published and then 3. The Town Board is directing the staff and Special Counsel to the Town are hereby authorized and directed to do such things and perform such acts and execute such documents as are necessary and are appropriate to effect this resolution and the town is hereby authorized to acquire through its power of Eminent Domain or otherwise negotiation purchase, title to the property.

**Board Member Avery:** OK, alright, I've got problems with the voting on this tonight for several reasons, none of which actually have nothing to do with my opinion about which route the sewer should take. We've addressed a couple of that attorney's allegations tonight, but there were more. And they were serious enough that I don't think, I don't see us moving forward until, and maybe there is nothing to them, but someone needs to refute them. Also, we've not seen, none of us have seen all of the written comments that came in after the Public Hearing. We weren't even told that they were there. Maybe again, in my inexperience, I should have gone looking for them.

**Special Counsel Mark McNamara, Esq.:** Well -

**Board Member Avery** But, but so, I haven't seen those. We haven't seen... This is a pretty comprehensive document that you have presented and again, we don't have copies of it, we have one copy that Greg has. So, and then finally, we as a Board, we've not mentioned the words Ludovico Sculpture Trail or Eminent Domain since that Public Hearing. We've not talked about it, we've not mentioned it so, I don't see how we can move forward with something this important until we've had a chance to talk, we've had a chance to see that document, we've had a chance to see those written responses. As I said, maybe I should've gone looking for them but, I kept waiting to hear where we would get them or waiting to receive them and that never happened.

**Special Counsel Mark McNamara, Esq.:** Let me address a couple of things that you said. If by comments you're talking about the comments that were made at the hearing or subsequent to the hearing.

**Board Member Avery:** Subsequent. We were all at the hearing.

**Special Counsel Mark McNamara, Esq.:** Right, but if you remember there aren't any new materials that were submitted subsequent to the hearing itself, they were, the main thing is that there were additional materials that were provided by, um, the Trail which was the audio-visual presentation that they wanted to do that night. That was provided later on in a flash drive and is part of the Public Record. The additional comments that came in were several but were along the lines of the same types of comments, same objections that were made at that meeting. That Record was, as required by law, was put together, which took a while because we had to wait for the transcript from, first of all we had to leave it open for a week and we had to get the transcript from the Court Reporter, that Record is was put together and was then overnighted to both the Town Clerk's Office and the County Clerk's office in April, a few days after April 7, probably the next week if I recall correctly. And again, respectfully, it was announced at the hearing that night that we would do that. This record would be available at the town Clerk's Office if any body wanted to go in and

read it but again frankly and respectfully, having sat through that hearing, there isn't anything new that you would have gleaned with respect to those comments other than to get them in perhaps more detail or to be able to review them a little bit more at your leisure in writing. And, finally, the Board hasn't no responsibility, not responsibility, obligation to respond to any of the comments. The purpose of that Public Hearing is exactly as you're doing, is to hear it, to take it in like a sponge and to consider it and then to make your Determination and Findings.

**Board Member Avery:** I understand that but, out of an obligation to the people who submitted those, we have an obligation to read them. We can't just say ... I can't be a part of saying "well, they just said the same thing everyone else said that night so we don't need to read them."

**Special Counsel Mark McNamara, Esq.:** I'm not, I'm not suggesting, uh, if that's what it sounds like I'm saying, I'm not suggesting that at all.

**Board Member Avery:** No offense, but that's what I thought you said.

**Special Counsel Mark McNamara, Esq.:** I shouldn't say that ... the ... the certainly the materials, the flash drive was a set of materials that came in, again it was an audiovisual thing and I think it was similar to another presentation which had been made to the Board but again, my only point would be that the materials were made available to the Board, not just to the Board but were made available to the entire community, for well over two weeks in those two clerk's offices for anybody's perusal or if they wanted to get their own copy of it, they were able to do that. There were no requests, Miss Greer can correct me if I am wrong, but I'm pretty sure there were no requests for a copy nor do I think that anyone came in to look at it.

**Board Member Avery:** I didn't know they were there.

**Supervisor Lazzaro:** Is there any further discussion?

[48:28]

**Board Member Porretta:** Yes, I just have a question about some of the things that were brought up at the Public Hearing such as the study for the bats, and some allegations at a Board meeting that current stuff that would be things that you are addressing if you need to go to court.

**Special Counsel Mark McNamara, Esq.:** Yes, if there is a challenge that is brought to the Determination and Findings then obviously we would have to address that as, in terms of defending and upholding the Determination and Findings assuming they'll pass this evening. But those issues were actually addressed. There's a difference of opinion between the people who raised those objections and Barton and Loguidice who would argue, and Peter Baker can speak to that, would argue that those issues in fact were addressed, which is why it led to the Negative Declaration that was cast in 2016 in which again was amended and re-affirmed this evening. It wasn't simply, and again I would defer to Peter to speak about this but, that was on the basis of a very detailed full Environmental Assessment Form that was done that looks at all of those and potential environmental impacts in a very detailed three-part form that the Board would've reviewed back in 2016. And in which was referenced by your resolution in 2016 as the basis for your Negative Declaration. That is still, that EAF, is what they're called, that Environmental Assessment form is still a key document and is still valid and is part of the underlying materials that are being, that were considered with respect to this evening's amended Negative Declaration.

**Board Member Porretta:** Thank you.

[50:22]

**Peter Baker:** Can I please have a moment to speak? (Inaudible) With regards to bats (coughs) excuse me, regards to bats, essentially, it's a threatened endangered species habitat it has nothing to do with wetland delineation and permitting that we go through. During the EAF process both of those were identified the fact that they're within the town of Seneca Falls (inaudible) generally you do have some issues with two species of bats. That's pretty much a State-wide requirement and as well as with

wetlands, we identify the fact that there were wetlands approximate to that trail. That was identified in the EAF. It was part of the Project moving forward, that we had to go through and get a federal wetland permit with DEC and the Corps of Engineers. That's a (inaudible) process that's going to be part of the final design. So once all of this is done, we submit a final design to the DEC that includes a wetland permit application, which go through that process such that we identified the fact that we delineated the wetlands, here's what works, here's how we want to mitigate, meaning we'll avoid the wetlands all we can, (inaudible) and certainly what the restoration process will be. So there's a final permitted process with the regulatory agencies would go through and look at that. So the fact that they were there (inaudible) back in the EAF. We've gone through that. We haven't submitted that yet simply because the DEC is not going to approve a permit unless we have permission to work on the property, the DEC is not going to go entertain and view that application.

**Supervisor Lazzaro:** Is there any more discussion? So, now we'll go to a vote, this will be another voice vote. Okay Miss Greer you want to go to a voice vote?

**Town Clerk Greer:** Frank Lazzaro?

**Supervisor Lazzaro:** Yes.

**Town Clerk Greer:** Vic Porretta?

**Board Member Porretta:** Yes

**Town Clerk Greer:** Doug Avery?

**Board Member Avery:** No.

**Town Clerk Greer:** Dave DeLelys?

**Board Member DeLelys:** Yes.

**Town Clerk Greer:** Lou Ferrara?

**Board Member Ferrara:** Yes.

**Supervisor Lazzaro:** Motion passes 4 to 1. The last Resolution of...  
Okay, back to the Agenda. Approval of minutes....